

# SENATE, No. 272

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## STATE OF NEW JERSEY 219th LEGISLATURE

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PRE-FILED FOR INTRODUCTION IN THE 2020 SESSION

**Sponsored by:**

**Senator THOMAS H. KEAN, JR.**

**District 21 (Morris, Somerset and Union)**

**SYNOPSIS**

Requires compliance with notice and approval process under MLUL for construction of free-standing structures on certain publicly-owned property.

**CURRENT VERSION OF TEXT**

Introduced Pending Technical Review by Legislative Counsel.



1 AN ACT concerning construction of free-standing structures on  
2 certain publicly-owned property, and amending and  
3 supplementing P.L.1975, c.291.  
4

5 **BE IT ENACTED** by the Senate and General Assembly of the State  
6 of New Jersey:  
7

8 1. (New section) A board of education, as defined in  
9 N.J.S.18A:18A-2 and the governing board of each public institution  
10 of higher education, as described in P.L.1994, c.48 (C.18A:3B-  
11 1 et seq.), shall submit an application for development in order to  
12 construct a free-standing structure on publicly-owned property.

13 For the purposes of this section, "free-standing structure" means  
14 a combination of materials to form a construction for use or  
15 ornamentation whether installed on, above, or below the surface of  
16 a parcel of land, and which extends 100 feet or more in height from  
17 the surface of the parcel of land, but shall not include a building as  
18 defined in section 3 of P.L.1975, c.291 (C.40:55D-3).  
19

20 2. Section 3 of P.L.1975, c.291 (C.40:55D-3) is amended to  
21 read as follows:

22 3. For the purposes of **[this act]** P.L.1975, c.291 (C.40:55D-  
23 1 et seq., unless the context clearly indicates a different meaning:

24 The term "shall" indicates a mandatory requirement, and the term  
25 "may" indicates a permissive action.

26 "Administrative officer" means the clerk of the municipality,  
27 unless a different municipal official or officials are designated by  
28 ordinance or statute.

29 "Agricultural restriction" means an "agricultural deed restriction  
30 for farmland preservation purposes" as defined in section 3 of  
31 P.L.1983, c.32 (C.4:1C-13).

32 "Agricultural land" means "farmland" as defined pursuant to  
33 section 3 of P.L.1999, c.152 (C.13:8C-3).

34 "Applicant" means a developer submitting an application for  
35 development.

36 "Application for development" means the application form and  
37 all accompanying documents required by ordinance for approval of  
38 a subdivision plat, site plan, planned development, cluster  
39 development, conditional use, zoning variance, construction of a  
40 free-standing structure pursuant to section 1 of P.L. , c. (C. )  
41 (pending before the Legislature as this bill), or direction of the  
42 issuance of a permit pursuant to section 25 or section 27 of  
43 P.L.1975, c.291 (C.40:55D-34 or C.40:55D-36).

44 "Approving authority" means the planning board of the  
45 municipality, unless a different agency is designated by ordinance

**EXPLANATION** – Matter enclosed in bold-faced brackets **[thus]** in the above bill is  
not enacted and is intended to be omitted in the law.

Matter underlined thus is new matter.

1 when acting pursuant to the authority of P.L.1975, c.291  
2 (C.40:55D-1 et seq.).

3 "Board of adjustment" means the board established pursuant to  
4 section 56 of P.L.1975, c.291 (C.40:55D-69).

5 "Building" means a combination of materials to form a  
6 construction adapted to permanent, temporary, or continuous  
7 occupancy and having a roof.

8 "Cable television company" means a cable television company as  
9 defined pursuant to section 3 of P.L.1972, c.186 (C.48:5A-3).

10 "Capital improvement" means a governmental acquisition of real  
11 property or major construction project.

12 "Circulation" means systems, structures and physical  
13 improvements for the movement of people, goods, water, air,  
14 sewage or power by such means as streets, highways, railways,  
15 waterways, towers, airways, pipes and conduits, and the handling of  
16 people and goods by such means as terminals, stations, warehouses,  
17 and other storage buildings or transshipment points.

18 "Cluster development" means a contiguous cluster or  
19 noncontiguous cluster that is not a planned development.

20 "Common open space" means an open space area within or  
21 related to a site designated as a development, and designed and  
22 intended for the use or enjoyment of residents and owners of the  
23 development. Common open space may contain such  
24 complementary structures and improvements as are necessary and  
25 appropriate for the use or enjoyment of residents and owners of the  
26 development.

27 "Conditional use" means a use permitted in a particular zoning  
28 district only upon a showing that such use in a specified location  
29 will comply with the conditions and standards for the location or  
30 operation of such use as contained in the zoning ordinance, and  
31 upon the issuance of an authorization therefor by the planning  
32 board.

33 "Conservation restriction" means a "conservation restriction" as  
34 defined in section 2 of P.L.1979, c.378 (C.13:8B-2).

35 "Contiguous cluster" means a contiguous area to be developed as  
36 a single entity according to a plan containing a section or sections  
37 to be developed for residential purposes, nonresidential purposes, or  
38 a combination thereof, at a greater concentration of density or  
39 intensity of land use than authorized within the section or sections  
40 under conventional development, in exchange for the permanent  
41 preservation of another section or other sections of the area as  
42 common or public open space, or for historic or agricultural  
43 purposes, or a combination thereof.

44 "Conventional" means development other than cluster  
45 development or planned development.

46 "County agriculture development board" or "CADB" means a  
47 county agriculture development board established by a county

1 pursuant to the provisions of section 7 of P.L.1983, c.32 (C.4:1C-  
2 14).

3 "County master plan" means a composite of the master plan for  
4 the physical development of the county in which the municipality is  
5 located, with the accompanying maps, plats, charts and descriptive  
6 and explanatory matter adopted by the county planning board  
7 pursuant to R.S.40:27-2 and R.S.40:27-4.

8 "County planning board" means the county planning board, as  
9 defined in section 1 of P.L.1968, c.285 (C.40:27-6.1), of the county  
10 in which the land or development is located.

11 (cf: P.L.2013, c.106, s.2)

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13 3. Section 7.1 of P.L.1975, c.291 (C.40:55D-12) is amended to  
14 read as follows:

15 7.1. Notice pursuant to subsections a., b., d., e., f., g. and h. of  
16 this section shall be given by the applicant unless a particular  
17 municipal officer is so designated by ordinance; provided that  
18 nothing contained herein shall prevent the applicant from giving  
19 such notice if he so desires. Notice pursuant to subsections a., b.,  
20 d., e., f., g. and h. of this section shall be given at least 10 days prior  
21 to the date of the hearing.

22 a. Public notice of a hearing shall be given for an extension of  
23 approvals for five or more years under subsection d. of section 37  
24 of P.L.1975, c.291 (C.40:55D-49) and subsection b. of section 40 of  
25 P.L.1975, c.291 (C.40:55D-52); for modification or elimination of a  
26 significant condition or conditions in a memorializing resolution in  
27 any situation wherein the application for development for which the  
28 memorializing resolution is proposed for adoption required public  
29 notice, and for any other applications for development, with the  
30 following exceptions: (1) conventional site plan review pursuant to  
31 section 34 of P.L.1975, c.291 (C.40:55D-46), (2) minor  
32 subdivisions pursuant to section 35 of P.L.1975, c.291 (C.40:55D-  
33 47) or (3) final approval pursuant to section 38 of P.L.1975, c.291  
34 (C.40:55D-50); notwithstanding the foregoing, the governing body  
35 may by ordinance require public notice for such categories of site  
36 plan review as may be specified by ordinance, for appeals of  
37 determinations of administrative officers pursuant to subsection a.  
38 of section 57 of P.L.1975, c.291 (C.40:55D-70), and for requests for  
39 interpretation pursuant to subsection b. of section 57 of P.L.1975,  
40 c.291 (C.40:55D-70). Public notice shall also be given in the event  
41 that relief is requested pursuant to section 47 or 63 of P.L.1975,  
42 c.291 (C.40:55D-60 or C.40:55D-76) as part of an application for  
43 development otherwise excepted herein from public notice.

44 In addition, public notice shall be given by a public entity  
45 seeking to erect an outdoor advertising sign on land owned or  
46 controlled by a public entity as required pursuant to section 22 of  
47 P.L.1975, c.291 (C.40:55D-31) or, if so provided by ordinance  
48 adopted pursuant to subsection g. of section 29.1 of P.L.1975, c.291

1 (C.40:55D-39), by a private entity seeking to erect an outdoor  
2 advertising sign on public land or on land owned by a private entity.

3 Public notice shall be given by publication in the official  
4 newspaper of the municipality, if there be one, or in a newspaper of  
5 general circulation in the municipality.

6 b. Except as provided in paragraph (2) of subsection h. of this  
7 section, notice of a hearing requiring public notice pursuant to  
8 subsection a. of this section shall be given to the owners of all real  
9 property as shown on the current tax duplicates, located in the State  
10 and within 200 feet in all directions of the property which is the  
11 subject of such hearing , unless the property is subject to the  
12 provisions of section 1 of P.L. , c. (C. ) (pending before the  
13 Legislature as this bill), in which case notice shall be given to the  
14 owners of all real property located in the State and within three  
15 miles in all directions of the property; provided that this  
16 requirement shall be deemed satisfied by notice to the (1)  
17 condominium association, in the case of any unit owner whose unit  
18 has a unit above or below it, or (2) horizontal property regime, in  
19 the case of any co-owner whose apartment has an apartment above  
20 or below it. Notice shall be given by: (1) serving a copy thereof on  
21 the property owner as shown on the said current tax duplicate, or  
22 his agent in charge of the property, or (2) mailing a copy thereof by  
23 certified mail to the property owner at his address as shown on the  
24 said current tax duplicate.

25 Notice to a partnership owner may be made by service upon any  
26 partner. Notice to a corporate owner may be made by service upon  
27 its president, a vice president, secretary or other person authorized  
28 by appointment or by law to accept service on behalf of the  
29 corporation. Notice to a condominium association, horizontal  
30 property regime, community trust or homeowners' association,  
31 because of its ownership of common elements or areas located  
32 within 200 feet of the property which is the subject of the hearing,  
33 may be made in the same manner as to a corporation without further  
34 notice to unit owners, co-owners, or homeowners on account of  
35 such common elements or areas.

36 c. Upon the written request of an applicant, the administrative  
37 officer of a municipality shall, within seven days, make and certify  
38 a list from said current tax duplicates of names and addresses of  
39 owners to whom the applicant is required to give notice pursuant to  
40 subsection b. of this section. In addition, the administrative officer  
41 shall include on the list the names, addresses and positions of those  
42 persons who, not less than seven days prior to the date on which the  
43 applicant requested the list, have registered to receive notice  
44 pursuant to subsection h. of this section. The applicant shall be  
45 entitled to rely upon the information contained in such list, and  
46 failure to give notice to any owner, to any public utility, cable  
47 television company, or local utility or to any military facility  
48 commander not on the list shall not invalidate any hearing or

- 1 proceeding. A sum not to exceed \$0.25 per name, or \$10.00,  
2 whichever is greater, may be charged for such list.
- 3 d. Notice of hearings on applications for development  
4 involving property located within 200 feet of an adjoining  
5 municipality shall be given by personal service or certified mail to  
6 the clerk of such municipality , except that notice of hearings on  
7 applications for development of property subject to the provisions  
8 of section 1 of P.L. , c. (C. ) (pending before the Legislature  
9 as this bill), shall be given by personal service or certified mail to  
10 the clerk of every municipality adjoining the municipality in which  
11 the property is located.
- 12 e. Notice shall be given by personal service or certified mail to  
13 the county planning board of a hearing on an application for  
14 development of property adjacent to an existing county road or  
15 proposed road shown on the official county map or on the county  
16 master plan, adjoining other county land or situated within 200 feet  
17 of a municipal boundary.
- 18 f. Notice shall be given by personal service or certified mail to  
19 the Commissioner of Transportation of a hearing on an application  
20 for development of property adjacent to a State highway.
- 21 g. Notice shall be given by personal service or certified mail to  
22 the State Planning Commission of a hearing on an application for  
23 development of property which exceeds 150 acres or 500 dwelling  
24 units. The notice shall include a copy of any maps or documents  
25 required to be on file with the municipal clerk pursuant to  
26 subsection b. of section 6 of P.L.1975, c.291 (C.40:55D-10).
- 27 h. Notice of hearings on applications for approval of a major  
28 subdivision or a site plan not defined as a minor site plan under this  
29 act requiring public notice pursuant to subsection a. of this section  
30 shall be given: (1) in the case of a public utility, cable television  
31 company or local utility which possesses a right-of-way or  
32 easement within the municipality and which has registered with the  
33 municipality in accordance with section 5 of P.L.1991, c.412  
34 (C.40:55D-12.1), by (i) serving a copy of the notice on the person  
35 whose name appears on the registration form on behalf of the public  
36 utility, cable television company or local utility or (ii) mailing a  
37 copy thereof by certified mail to the person whose name appears on  
38 the registration form at the address shown on that form; (2) in the  
39 case of a military facility which has registered with the municipality  
40 and which is situated within 3,000 feet in all directions of the  
41 property which is the subject of the hearing, by (i) serving a copy of  
42 the notice on the military facility commander whose name appears  
43 on the registration form or (ii) mailing a copy thereof by certified  
44 mail to the military facility commander at the address shown on that  
45 form.
- 46 i. The applicant shall file an affidavit of proof of service with  
47 the municipal agency holding the hearing on the application for

1 development in the event that the applicant is required to give  
2 notice pursuant to this section.

3 j. Notice pursuant to subsections d., e., f., g. and h. of this  
4 section shall not be deemed to be required, unless public notice  
5 pursuant to subsection a. and notice pursuant to subsection b. of this  
6 section are required.

7 (cf: P.L.2005, c.41, s.3)

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9 4. This act shall take effect on the first day of the seventh  
10 month next following enactment.

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#### STATEMENT

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15 This bill requires boards of education and the governing boards  
16 of public institutions of higher education to submit an application  
17 for development in order to construct a free-standing structure on  
18 publicly-owned property.

19 For the purposes of the bill, a “free-standing structure” is defined  
20 to mean a combination of materials to form a construction for use or  
21 ornamentation whether installed on, above, or below the surface of  
22 a parcel of land, and which would be 100 feet or more in height  
23 from the surface of the parcel of land, but does not include a  
24 building as defined in the “Municipal Land Use Law.”

25 Under the bill’s provisions, public notice of a hearing on the  
26 application would be required. The bill specifies that in addition to  
27 notice being provided to neighboring municipalities of the  
28 municipality to which the application for development is submitted,  
29 notice also would be required to be given to the owners of all real  
30 property within three miles in all directions of the property on  
31 which the free-standing structure would be built.